IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 617 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HITESHCHANDRA MAHENDRABHAI BHATT - Appellant(s)
Versus
AHMEDABAD MUNICIPAL CORPORATION & 3 - Defendant(s)

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Appearance :
MR SV RAJU for Appellant(s) : 1,
MR BP TANNA for Defendant(s) : 1 - 2.
None for Defendant(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/07/2006

ORAL JUDGMENT

By way of this appeal, the appellant herein – original plaintiff has challenged the judgment and decree passed by the learned City Civil Court at Ahmedabad dated 9-3-1984 passed in Civil Suit No.2072 of 1982 in

dismissing the said suit.

2. At the relevant time, the appellant-original plaintiff was serving as Junior Scientific Assistant. He filed the aforesaid suit against the original defendant No.1 – Municipal Corporation and original defendant Nos.4 and 5 for a declaration that the appointment of original defendant No.4 to the post of Senior Scientific Assistant or in the equivalent post of Senior Microbiologist being illegal and hence not binding to him. He also further prayed for a declaration to the effect that persons working in the Corporation, who were junior to him and if confirmed their confirmations may be cancelled.

3. At the relevant time, original defendant No.4 was also serving as Junior Scientific Assistant with the petitioner and on creation of the post of Senior Microbiologist, he was given charge on temporary basis. His appointment came to be challenged by the appellant herein by way of the present suit. It was the contention on behalf of the appellant that, as original defendant No.4 was not having requisite qualification for the post of Senior Microbiologist, he could not have been appointed on the same post. Learned trial Court raises

the issue, which reads as under:

(1)Whether the plaintiff proves that the appointment of defendant No.4 to the post of Senior Scientific Assistant or to the equivalent post of Senior Microbiologist is against the requirement of rules framed and hence the same is not legal and valid?

(2)Whether the plaintiff proves that the action on the part of the defendant Nos.2 and 3 not to confirm him is illegal, arbitrary and that entitles him to the suit relief(s)?

(3)What order and decree?

4. So far as issue No.2 is concerned, as the reference was pending before the Industrial Tribunal, Gujarat by way of Reference (IT) No.137 of 1983, the learned trial Court dismissed the suit qua that relief. It is submitted by the learned advocate appearing on behalf of the parties that during the pendency of the present first appeal, an award came to be passed by the Industrial Tribunal in favour of the appellant herein and considering the fact that in the meantime, the Corporation itself has confirmed the appellant. It is also reported that even all consequential benefits are also given to the appellant herein. In that view of the

submission, subsequent development and judgment and decree passed by the Industrial Tribunal, nothing further is required to be done by this Court.

So far as issue No.1 with regard to challenging the appointment of original defendant No.4, is concerned, it is reported that during the pendency of the present appeal, he has expired. No steps are taken to bring the heirs of original defendant No.4 on record. Under the circumstances, even otherwise, the appeal against original defendant No.4 is abated. Even, otherwise considering the prayer against original defendant No.4 i.e. challenging the appointment of original defendant No.4 as Senior Microbiologist, is concerned, it is required to be noted that no further consequential relief was sought for quashing and setting aside the appointment of original defendant No.4 as Senior Microbiologist, if any. Under the circumstances, on death of original defendant No.4, the question has become academic.

5. For the reasons as stated above, the appeal fails and dismissed accordingly. No costs.

(M.R.SHAH,J.)

shekhar/-